International Legislation and Administration

By

ALPHEUS HENRY SNOW

American Peace Society
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With an Appendix
Containing the Documents referred to in the text.

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INTERNATIONAL LEGISLATION AND ADMINISTRATION

By ALPHEUS HENRY SNOW

A SURVEY of international politics discloses two great facts. The first is, that the nations have always refused to consider any plan for instituting an international government endowed with physical force. The second is, that the nations, by the Hague Convention for Pacific Settlement of International Disputes,* ratified by practically all of them, besides establishing the judicial part of an international organization, legitimized and recommended international conciliation of disputant or belligerent nations by any nation not engaged in the dispute, through good offices and mediation, and also recommended the institution of commissions of inquiry by disputant nations to settle the dispute as agencies of international conciliation.

This second fact is of profound importance; for the Convention for Pacific Settlement is, so far as it goes, a written constitution of the society of nations. By it the united nations instituted an international judicial organ—the Permanent Court of Arbitration,—and certain administrative organs ancillary to the court—the Permanent Administrative Council and the International Bureau. By it mediating nations, and commissions of inquiry instituted by disputant nations, were recognized as international conciliative agencies in the particular case. By it the processes of action of these international agencies and organs were prescribed. By the Draft Convention for a Judicial Arbitration Court†—otherwise called the Permanent Court of Arbitral Justice—the second Hague Conference instituted an additional international organ and prescribed its processes; and when the nations agree concerning the manner of selecting the judges of this new international court and

* See Appendix A, p. 23.
† See Appendix B, p. 39.

thus put the Draft Convention into effect, the Draft Convention will in fact form an additional part of the Convention for Pacific Settlement. The Convention for Pacific Settlement is, however, an incomplete written constitution, because it fails to institute any international legislative organs or processes whatever, and because the administrative organs instituted by it, being only ancillary to the judicial organ, are inadequate for general international administrative purposes. In spite of the incompleteness and inadequacy of the Convention for Pacific Settlement, however, the fact that it exists, as the substantially unanimous act of all nations, is perhaps the most momentous circumstance in human history. When the substantially unanimous ratification of this Convention was completed, in the summer of 1907, the nations ceased to be a mere unorganized community, and became an organized voluntary and cooperative society and union for judicial purposes—a *Verband,** as the German writers describe it, or a consociation, as we might call it.

The nations were not ready, at the time of the Hague Conferences, to consider the question of an improved arrangement for international legislation and administration. It was not even discussed in 1899 or in 1907. The ten years that have nearly elapsed since the second Hague Conference have, however, been years of wonderful development and progress. This universal war has clarified many things that before were unseen or seen only darkly. The question of making an improvement in international legislation and administration is now one of practical politics. It is clear that such an improvement must occur through the amendment and revision of the Convention for Pacific Settlement so as to add to it the proper institutions for international legislation and administration, consistent with the existing judicial, administrative, and conciliative institutions established by it and conforming to the general spirit of the Convention and the fundamental principles on which it is based.

The first question is, ought an international administrative body to be itself empowered to use physical

* See *Der Staatenverband der Haager Konferenzen*, by Professor Walther Schücking, of the University of Marburg, published in 1912.

force to control the nations; that is to say, ought a physical-force international government to be instituted by the nations to govern them for the common purposes? If the nations delegate to a physical-force government the power to govern them, they must also delegate to it the power to tax for the common purposes and the power to raise, support, and wield an international army, navy, and police. The power to tax, as has been well said, is the power to destroy.

The question whether a physical-force international government is politically practicable as tending to just government almost answers itself in the negative, since all the nations have persistently, unanimously, and recently refused even to consider such a form of government. Yet, as such an international government is advocated by many, it will be desirable to analyze the reasons why it is impracticable and to satisfy ourselves that these reasons are permanent and unchangeable.

All plans for such an international government fall in one of three classes: They are plans for international government by one nation; or by a league of nations; or by a body of men delegated by the nations, with power to raise, support, and wield an international army, navy, and police. An international government consisting of one nation would be necessarily autocratic, since a nation is necessarily endowed with physical force and cannot be legally limited. The only limitations upon the powers of a nation which are possible are self-limitations imposed by the nation upon itself, which, from the standpoint of political science, are no limitations. Moreover, the only nation which could, as a matter of practical politics, be the constituted international autocrat would be one which was already the *de facto* international autocrat by reason of its control of the seas, the international trade routes, and the regions inhabited by weak or backward peoples, and which was so favorably located as to be able successfully to weaken all its rivals by playing as sure winner in the diplomatic and military game of the balance of power.

A league of nations is, like a nation, endowed with physical force and is incapable of constitutional limitations; and if such a league were to institute itself as the international government, it would have to be, already, collectively, the *de facto* international autocrat. There

being no possibility of constitutional limitation either as respects the internal or the external relations of the league, it would necessarily develop an invisible government of its own, which would be the autocrat of the league and of the world. This invisible government would necessarily be a body of men, or the one nation which at the moment happened to be the *de facto* and actual autocrat of the world.

If the nations without disarming were to appoint a body of persons with governmental powers for the common purposes, and endow this body with physical force, the result would be to increase the possibilities of war without establishing an efficient international government. If the nations were to disarm and delegate powers of government for the common purposes to a body of persons, at the same time endowing this body with physical force, they would destroy themselves as nations and become states of a universal federal state. Such self-abnegation on the part of the nations, if conceivable as a matter of practical politics, would, however, be of no avail, since a federal state thus established would be found to be inefficient as a means of preserving international order and peace.

The federal state, if attempted to be applied where the requisites for its operation do not exist, establishes an autocracy of a majority necessarily ignorant of its own needs or the needs of the minority, which is the worst and most hopeless of all autocracies. The two requisites for the successful existence of a federal state have been proved to be, first, that it shall include a territory every part of which is contiguous with every other part or is so situated and populated that it may be regarded as appurtenant for political purposes; second, that it shall contain a population which is highly civilized and homogeneous, and which is under an economic pressure to cooperate as an economic unit. Where these two conditions do not exist, the federated states and peoples are necessarily ignorant of the local conditions of each other and are swayed by their local interests, so that the majority vote of their representatives is necessarily determined by the play of the local interests against each other. Such a situation means either government by an assembly which is autocratic through ignorance or an invisible government which is autocratic

as being without constitutional limitations. On account of the realization of this danger of the federal-state plan of government, if extended beyond the regions in which the necessary conditions exist, the proposal for converting the British Empire into a federal state, promoted by the Imperial Federation League from 1885 to 1895, was rejected by the people of Great Britain and by the people of the British dominions, colonies, and dependencies. For the same reason the people of the United States rejected the proposal to incorporate the Philippines into an enlarged American federal state. Taking the world together, with its diverse nations and peoples, the conditions for uniting the nations and their peoples into a federal state are not only lacking at the present time, but undoubtedly for all time to come.

If, therefore, the nations were to attempt to institute any kind of international government endowed with physical force, they would inevitably be instituting an international autocracy. It would be indispensable that in any constitution of the society of nations there should be an express constitutional prohibition denying physical force to any part of the organization—legislative, administrative, or judicial—and also a prohibition denying the power of taxation in any form or under any guise whatever, since a body which can tax can endow itself with physical force.

The object of these prohibitions would be, however, only to prevent the international body delegated by the nations from becoming autocratic, and it would doubtless be needful that it should exercise certain international police powers in certain exceptional cases. Therefore it would be necessary to provide, by way of exception, that these prohibitions should not prevent the nations from making grants to the international body, by special international agreements, of police or taxing power, or both, within international areas or internationalized districts designated by these international agreements, where the local circumstances were such that it would be certain that resistance would be made to the international police only by individuals or by small unorganized bodies of individuals.

But though thus substantially deprived of physical force, the international body which any constitution of the society of nations must necessarily institute of course

must not be deprived of force, since all government involves the use of force. It could be, and undoubtedly ought to be, endowed with persuasive force. Persuasion is a force which is utilizable, and every day utilized, with increasing effectiveness, by all governments, but which, like all forces, has the possibility of use for good or for evil. An international body delegated by the nations could use persuasion to induce the nations either to cooperate in order and peace, or to compete with each other in disorder and war. By controlling the physical force of some of the nations it could terrorize and enslave other nations or produce interminable war and anarchy. Such a power must be carefully safeguarded by constitutional limitation, so that it may be effective and yet not dangerous.

The international body, in order to be effective, must exercise scientifically organized, informed, and applied persuasion. This implies conciliation by expert, informed, and aggressive action. It must not sit still and wait for the nations to ask it to act. It must investigate and inform itself, must formulate counsel on the facts discovered by investigation, and must do everything proper to induce the nations to accept and follow its counsel. A body endowed with the power of conciliation uses real force and superior force, for it uses psychical force; and psychical force, being the creator, user, and destroyer of physical force, is necessarily superior and major force.

The international conciliative body, in order to be effective, must be pervasive. It must therefore have in each nation a permanent branch or delegation. Doubtless the international body would appoint the members of each national delegation, subject to confirmation by the nation through its executive government or its legislature. Doubtless, also, the members of each national delegation would be removable by the international body.

The international conciliative body, in order to be effective, must be armed by the nations with the weapon of publicity, so that it may create and wield, or correct, public sentiment in favor of its righteous counsel. The power to publish its counsel and support it by statement of facts and by argument might, and probably would,

require that it should be granted a means of publication controlled by itself.

The international body, in order not to be dangerous, must use its power of persuasion exclusively for conciliation to induce cooperation. It must appeal to self-interest, seen in light of the interests of all concerned. There must be an entire absence of threats, secret pressure, or other form of terrorization. Partisan politics must never be allowed to influence its personnel or work, or that of its delegation in any nation. Its independence and impartiality must be absolute and should be jealously prized and guarded by the people.

It should be impossible in the future for any conferences to be held when secret treaties exist affecting the objects discussed, unknown not only to the nationals of the countries involved, but to the very parliaments themselves, as has been the case in the past. The fundamental work of the international body must be, through its delegation in each nation, to instruct the people—the masses of the people—concerning the international status, the situation of their own nation, the attitude of their own national administration towards international affairs and the reasons for and against it, as clearly and definitely as is compatible with the public interest; so that public opinion, instead of being swayed by ignorance, by prejudice, or by local self-interest, will be sound and enlightened and a source of strength in any crisis.

Conciliation necessarily involves the acceptance and promulgation of democracy, republicanism, and cooperation; that is, in a word, the two Great Commandments of the New Testament. It implies government by consent, since conciliation by the government and consent by the governed are correlative. The philosophy which it must inevitably act upon and inculcate, if it acts logically, is the philosophy of cooperation—that each man and each nation can gain more by voluntarily cooperating with all others in utilizing the forces of nature for human development and by participating equitably in the common product, than is possible by isolated or competitive action.

The principle of conciliative direction of the international acts and relations of nations by international agencies is the fundamental principle on which the Con-

vention for Pacific Settlement is based. The first part of that Convention is devoted to "good offices and mediation"; the second to "arbitration." "Good offices and mediation" are merely diplomatic terms to express two processes of the whole process of international conciliation. Though the Convention, as has been said, creates no general international agency of international conciliation, nevertheless, by its legitimation and approval of good offices and mediation by one nation as respects disputes between other nations, and by its recommendation to disputant nations to institute commissions of inquiry for the settlement of the dispute as international conciliative agencies, it recognizes international conciliation as a proper and feasible means of directing international action. The establishment of means for international legislation and administration by conciliation, therefore, would not require that the nations should accept a new principle. It would only be the carrying out to its logical conclusion a principle which they have already accepted. The problem of bringing about efficient international legislation and administration is that of formulating a scheme of international legislation and administration based on the accepted principle of international conciliation, which shall be acceptable to the nations as being for their general and particular self-interest, and of fitting this scheme into the present scheme of international adjudication and national conciliation established by the Convention for Pacific Settlement, so as to expand that Convention into a complete written constitution of the society of nations.

The proper organs of an international political body for effecting international legislation and administration by conciliation would, it seems, not be a legislature and an executive exactly in the sense in which we use these terms, but would resemble what in our large civic associations and our business trusts (and, indeed, in nearly all associations of a purely voluntary and cooperative character) we call an executive committee and a general committee. The body corresponding to an executive committee might be called the ordinary international directorate, and the one corresponding to a general committee the superintending international directorate. The ordinary directorate would, through its members, aided by such subordinate committees and expert assist-

ants as might be found necessary, and by the local delegations in each nation, do the continuous administrative work of conciliation—making investigation of facts, formulating its counsel on the facts as ascertained, and doing everything proper, short of using physical force, to induce the adoption of the counsel by the national governments concerned. The superintending directorate, meeting occasionally or periodically, would, as chief administrative, superintend the administrative action of the ordinary directorate by formulating different counsel in particular cases, and would also act legislatively by laying down general rules applicable to general classes of international activities. These general rules would be primarily for the guidance of the ordinary directorate in its conciliative work. Incidentally they would be for the guidance of the nations and their peoples in the classes of international activities to which the rules would relate.

The ordinary directorate would doubtless be more effective if it were to be an appointive body. The members might be appointed by a body corresponding to the Permanent Administrative Council established by the Hague Conferences, or by the superintending directorate. The superintending directorate would doubtless be most efficient if it were to be a representative body. The system adopted in the United States of having a Senate and House of Representatives, the one representing the nations as equals and the other representing districts of equal population, would seem to be applicable.

The composition of the membership of the directorates would be a matter of prime importance. There would doubtless need to be stringent rules determining the eligibility of persons to membership in either directorate, particularly in the ordinary directorate. The use of conciliation as a governing force, so as efficiently to direct the action of masses of men, by their own consent, into activities which are to their self-interest and also are to the interest of all, is expert work of the highest character. No one should be eligible to such an official station who is not naturally endowed with great intellect and conscientiousness and who has not added as much as possible to his natural powers by education, by study and research, by travel enlightened by knowledge of languages, and by actual experience in government.

Under an international conciliative directorate, international legislation would be effected, as at present, by the conventional enactments of conferences of all nations ratified by the separate nations, or by the fixation of international custom through coinciding treaty and diplomatic action of many nations; but, in addition, it would be effected by the general rules laid down by the superintending directorate for the guidance of the ordinary directorate, by the ordinary directorate in following its own precedents of counsel, and by uniform national legislation and treaty action respecting international matters, this uniformity being brought about by the conciliative action of the international directorate. Each nation would be regarded as having not only exclusive powers of government within its own borders and over its own purely internal activities, and over all its citizens and corporations as respects their international activities, but also concurrent full powers of government with all other nations over the high seas, and concurrent limited powers of government over the international trade routes, natural and artificial, and over all regions held as dependencies by any one nation. The international directorate and the national legislatures and treaty-making organs, acting uniformly in international affairs, would all together constitute the international legislature. International conferences for framing rules of international law, subject to ratification by the nations, might also be held, if deemed advisable.

The international administration would be conducted by the two directorates and the executives of the different nations, the latter enforcing, each upon its own nationals and corporations, in a uniform manner recommended by the international directorate, the international legislation enacted in manner above described. The international administrative body would thus be composed of the international directorate and the particular national executive engaged in enforcing a particular act of international legislation.

The present Permanent International Court of Arbitration, and the Permanent Court of Arbitral Justice already agreed to in principle by the second Hague Conference, would remain as the supreme judicial organs of the society of nations; their decisions being advisory and being reported by the respective courts to the

ordinary international directorate, so that it might secure their enforcement through conciliation of the nations concerned. Doubtless in the long run international district courts would be established in correspondence with the Permanent Court of Arbitral Justice, each district comprising one large nation or a group of smaller nations. These district courts might have final jurisdiction in non-constitutional cases in which the rights involved were really those of individual nationals of different nations, subject to *certiorari* from the Permanent Court of Arbitral Justice. The Permanent Court of Arbitral Justice might have appellate jurisdiction over the district courts in constitutional cases between individual nationals of different nations and exclusive jurisdiction in suits between nations involving strictly national rights as distinct from the rights of individual nationals. The nations would, of course, remain at liberty to settle their disputes by arbitration conducted by arbiters of their own choice, if they saw fit.

The primary power which would need to be delegated to the international directorate would be the power to bring about, through conciliation applied to national governments so as to induce uniform national legislation and treaty action, the internationalization and freedom of the high seas and of the international trade routes, including international railroads, canals, straits, sounds, and rivers. This would involve a conciliative direction of international trade, finance, intercourse, and migration. Power might also be delegated to the international directorate to bring about, by the same conciliative action, a more or less complete internationization of backward countries held as dependencies of separate nations, such internationalization to be effected by each nation holding dependencies adopting a more or less open-door policy, determined in each case by the local circumstances of the particular dependency, as respects concessions for internal improvements and for carrying on manufacturing, mining, trade, transportation, banking, etc., in these countries; the ultimate goal being the equalization of economic opportunity among all the nations.

The exceptional cases in which the police and taxing power, or the police power alone, might properly be granted to the international directorate would, it seems,

be of three kinds: First, if a district were provided as the seat of international direction, the international directorate would necessarily have the power of local police and local taxation within the district; second, if the high seas, as an international area by reason of being the common property of all nations, were to be freed from national naval vessels, as the result of destructive inventions and the successful working of the international directorate, the international directorate might be granted authority to patrol the sea routes for police purposes; and, third, if zones or districts bordering on straits, canals, or rivers were internationalized by special international agreement, the international directorate might be granted authority to maintain a police patrol within the internationalized zone or district.

The whole directorate, composed of the ordinary directorate and the superintending directorate, together with the international courts—which might be called the general international directorate—would be financially supported in the same manner as is the present international body located at The Hague. The Convention for Pacific Settlement provides that the expenses of the present Hague organization "shall be borne by the signatory powers in the proportion fixed for the International Bureau of the Universal Postal Union." The Convention establishing the Universal Postal Union actually fixes the proportions to be paid. Doubtless no better system could be devised at the present time.

The safeguards around the international directorate would be, primarily, the substantial denial of power to use physical force, which would carry with it a denial of general taxing power; secondarily, the requirement that in its action it should deal exclusively with the national governments; that it should use conciliation and persuasion exclusively; that it should be composed of experts and superintending experts; that it should have a specific sphere of powers relating to the seas as the common property of all nations, to the international trade routes as subject to the common use of all nations, and to the colonies and dependencies as subject to a qualified common use by all nations; and, thirdly, the provision that it should never be reduced to the necessity of begging money from the nations or asking protection from any nation, but should be assured, in ad-

vance and permanently, by an agreement of all nations, an adequate and dignified support, and perhaps also an appropriate seat of international direction exclusively governed by itself.

It is incumbent on the United States to see to it, so far as may be in its power, that no international directorate is ever established except under a written constitution delegating carefully limited powers and ratified by all, or at least two-thirds, of the nations, and that the written constitution shall be plainly such on its face—not merely in substance, but also in form. It is incumbent also upon the United States to see to it that this constitution shall contain a plain and distinct recognition of the universal and fundamental principles which lie at the basis of all orderly and peaceful society. The insistence of Americans on written constitutions is not a mere American idiosyncrasy. Written constitutions are a vital and essential part of the American system, regarded as a universal system. By the Declaration of Independence* the American people committed themselves to maintenance of the proposition, as a universal and self-evident truth, that all men are equally the creatures of a common Creator, and that there are therefore certain rights of every human being, of which he cannot by his own action deprive himself, which arise from the nature of man as a spiritual being and from the equal endowment of each man by his Creator with the attributes of life, the will to live, and the desire for happiness, which are common to all; so that these fundamental and universal rights exist antecedent to and independent of any government, however great and powerful. This fundamental and necessary limitation upon the power of all governments requires recognition by all governments through a written constitution; and since all the subordinate rights of individuals established by governments must be derived from and be consistent with these fundamental rights, written constitutions are also necessary in order to enable the people governed so to frame their government, and so to limit and safeguard it, by general declarations, by specifications of powers, and by prohibitions, that it will certainly respect and secure the fundamental principles which underlie all human society and the fundamental rights of indi-

* See Appendix C, p. 47.

viduals and nations based on these fundamental principles.

Therefore it would be necessary that the written constitution of the society of nations establishing the international directorate should contain a declaration of the universal and fundamental principles of all human action and relationship, such as is contained in the first sentence of the second paragraph of the preamble of the Declaration of Independence:* a declaration of the fundamental rights and duties of nations,† such as that which has been adopted by the American Institute of International Law and the American Peace Society; a declaration of the objects of the constitution, modeled upon the preamble of the Constitution of the United States;‡ and also, if possible—after the provisions instituting the different parts of the international directorate, defining their composition and the relations of one to the other, and determining the sphere of jurisdiction of the whole directorate and each of its parts by a specification of powers—a bill of rights,§ democratizing and republicanizing the relations between the government of each nation and the people of the nation by establishing prohibitions, absolute or conditional, upon certain forms of governmental action found by experience to be universally injurious or destructive to liberty.

The institution of such an international directorate as has been above proposed would not disturb any of the existing agencies or processes by which international activities and relations are now directed. The nations would retain their ministries of foreign affairs, their ministries in charge of dependencies, their diplomatic and consular officers, and their courts functioning in international cases. The judicial tribunals and the administrative arrangements ancillary to them, established by the Hague Conferences, would be unchanged. Upon the present international mechanism the international directorate would be superposed, as a means of bringing all the existing agencies and processes into cooperation and harmony.

The international directorate proposed would be but

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* See Appendix C, p. 47.
† See Appendix D, p. 48.
‡ See Appendix E, p. 50.
§ See Appendix F, p. 51.

an application on a universal scale of the system which nearly all nations having dependencies have found necessary in the management of their colonial empires. The Privy Council and the Council for India in Great Britain, and the Colonial Councils of the European nations, which under the ministries for the colonies and dependencies manage the colonial empires of these respective nations, are in principle interstate directorates, holding together widely separated countries, diverse in race, climate, and civilization, by methods which are essentially conciliative. Though these interstate directorates are backed by the physical force of the nation, physical force has been found to be inapplicable in holding dependencies to nations except when used sparingly and scientifically in aid of conciliation, and in many cases to be wholly inapplicable. The superintending directorate in colonial empires is in process of evolution, and in one or more of them will doubtless soon be a fact. The problem of holding together the widely separated nations of the world, diverse in race, climate, and civilization, is clearly analogous to the problem of managing colonial empires. The only difference is that the international directorate must be a delegated body, instituted by all the nations, which shall be of and for them all, and shall carry the principles of democracy and republicanism into international relations.*

The plan proposed would, of course, not be a panacea for all international ills. Each nation would continue to be free and independent. It would reject or accept the counsel of the international directorate according as it thought its self-interest demanded. Secret treaties and other forms of intrigue and excessive national armaments to support the intrigues, would doubtless continue to go on. Domination of the seas, the international trade routes, and the backward countries by individual nations or by a league or leagues of nations, would, no doubt, continue to be attempted. Invisible international government, in democracies and monarchies, would un-

* Cf. *The Administration of Dependencies*, by the author of this article, pp. 527-530, 578-604, as respects the management of colonial empires by directive councils and superintending directive bodies, and the applicability of the directorate form of government in political aggregations where the federal-state form is inapplicable.

doubtedly continue to be the dream of political, financial, and trading syndicates, and to have a more or less stable *de facto* existence. Attempts would probably be made to pervert the international directorate to selfish national ends. Therefore war would continue to be possible. But a means would have been provided for the gradual abolition of all these abnormal processes and agencies and for the limitation, by the free act of the separate nations, of the excessive national armaments which make these abnormal processes and agencies possible. Excessive national armaments will be limited by the voluntary act of each nation when it ceases to be for the self-interest of each nation to maintain an excessive armament. When an international organization, by its successful operation, has made some part of a nation's armament unnecessary, and therefore excessive, the nation will, as a matter of common sense and economic necessity, scrap the part which is excessive and release the capital and labor for productive employment. Limitation of national armament in any other manner is, it would seem, impossible. In this manner it may be possible.

That some such international conciliative directorate as has been suggested, exercising legislative and administrative as well as judicial direction of the nations as respects international matters, must sooner or later be established, would seem to be beyond doubt. Destructive inventions have made the strong nations and the weak nations almost equally strong and equally defenseless. Constructive inventions have enabled all men and nations to share equally in the common necessities of life and in the common knowledge. All the races of men are rapidly becoming equal in physique and intelligence and equally cognizant of their fundamental rights.

The proper time to begin the institution of the new system would seem to be the present moment. The questions of national existence and boundaries, which are now the obstacles to peace, are almost entirely questions incidental to the rival ambitions of great powers. As things now are, small nations occupying strategic positions on international trade routes cannot be allowed independent existence within boundaries determined by the principles of nationality and equality of national right and opportunity. These small nations must, under

the present system, be given such boundaries and allowed such privileges as are consistent with the political and economic policies of the nation or group of nations which for the moment holds the balance of power and dominates the particular international trade routes on which these small nations are situated. So long as there is no international direction to modify and gradually to supplant the present system of the balance of power, that system will remain, involving all the great powers in the struggle for world power, and leaving the small and strategically important nations in a condition of perpetual uncertainty as respects their boundaries, their privileges, and even their national existence. A conclusion of the war which should determine, according to the exigencies of the balance of power, the relations of the great powers to each other and the privileges and boundaries of smaller nations, would greatly complicate the future. Such a peace, as laying the foundation for a greater war in the future, might prove a worse calamity than the war itself. The most certain assurance against a peace of this kind would seem to be a unanimous agreement between the great powers, entered into during the war, accepting the principle of an international conciliative direction after the war.

Once such an agreement were signed, it would be possible for the great powers, in the treaty of peace, with safety to each and all and without loss of dignity to any, to adjust properly the relations of each to the other and to determine scientifically and fairly the questions concerning the existence, rights and boundaries of the smaller nations and the claims of the nationalities which are aspiring to nationhood. A treaty of peace so made would form a sound basis for the future orderly and peaceful cooperative development of all nations, and would greatly simplify the work of the international directorate which would be formally instituted after the war through a constitutional convention of all nations.

APPENDIX

Containing Documents Referred to in the Text.

APPENDIX A.

THE CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES,

Adopted by the First Hague Conference. Signed July 29, 1899.

His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty the King of Spain, and in His Name Her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United Mexican States; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of all the Russias; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; the Swiss Federal Council; His Majesty the Emperor of the Ottomans, and His Royal Highness the Prince of Bulgaria.

Animated by a strong desire to concert for the maintenance of the general peace;

Resolved to second by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity which unites the members of the society of civilized nations;

Desirous of extending the empire of law and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of arbitral procedure;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, to-wit:

[Here follow the names of plenipotentiaries.]

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions:

TITLE I.—ON THE MAINTENANCE OF THE GENERAL PEACE.

Article 1.

With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to insure the pacific settlement of international differences.

TITLE II.—ON GOOD OFFICES AND MEDIATION.

Article 2.

In case of serious disagreement or conflict, before an appeal to arms, the signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Article 3.

Independently of this recourse, the signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

Article 4.

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Article 5.

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Article 6.

Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

Article 7.

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation occurs after the commencement of hostilities it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

Article 8.

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

TITLE III.—ON INTERNATIONAL COMMISSIONS OF INQUIRY.

Article 9.

In differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the signatory Powers recommend that the parties, who have not been able to come to an agreement by means of diplomacy, should as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

Article 10.

The international commissions of inquiry are constituted by special agreement between the parties in conflict.

The convention for an inquiry defines the facts to be examined and the extent of the commissioners' powers.

It settles the procedure.

On the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

Article 11.

The international commissions of inquiry are formed, unless otherwise stipulated, in the manner fixed by Article 32 of the present convention.

Article 12.

The Powers in dispute engage to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

Article 13.

The international commission of inquiry communicates its report to the conflicting Powers, signed by all the members of the commission.

Article 14.

The report of the international commission of inquiry is limited to a statement of facts, and has in no way the character of an arbitral award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement.

TITLE IV.—ON INTERNATIONAL ARBITRATION.

CHAPTER I.—ON THE SYSTEM OF ARBITRATION.

Article 15.

International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law.

Article 16.

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

Article 17.

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

Article 18.

The arbitration convention implies the engagement to submit loyally to the award.

Article 19.

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

CHAPTER II.—ON THE PERMANENT COURT OF ARBITRATION.

Article 20.

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

Article 21.

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

Article 22.

An International Bureau, established at The Hague, serves as record office for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by special tribunals.

They undertake also to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

Article 23.

Within the three months following its ratification of the present Act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified by the Bureau to all the signatory Powers.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place shall be filled in accordance with the method of his appointment.

Article 24.

When the signatory Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the competent tribunal to decide this difference must be chosen from the general list of members of the Court.

Failing the direct agreement of the parties on the composition of the arbitration tribunal, the following course shall be pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equal, the choice of the umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

The tribunal of arbitration assembles on the date fixed by the parties.

The members of the Court, in the discharge of their duties and out of their own country enjoy diplomatic privileges and immunities.

Article 25.

The tribunal of arbitration has its ordinary seat at The Hague.

Except in cases of necessity, the place of session can only be altered by the tribunal with the assent of the parties.

Article 26.

The International Bureau at The Hague is authorized to place its premises and its staff at the disposal of the signatory Powers for the operations of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed on recourse to this tribunal.

Article 27.

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the conflicting parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

Article 28.

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court, and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension, or dismissal of the officials and employes of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It furnishes them with an annual report on the labors of the Court, the working of the administration, and the expenses.

Article 29.

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

CHAPTER III.—ON ARBITRAL PROCEDURE.

Article 30.

With a view to encourage the development of arbitration, the signatory Powers have agreed on the following rules which shall be applicable to arbitral procedure, unless other rules have been agreed on by the parties.

Article 31.

The Powers who have recourse to arbitration sign a special act (*compromis*), in which the subject of the difference is clearly defined, as well as the extent of the arbitrators' powers. This act implies the undertaking of the parties to submit loyally to the award.

Article 32.

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Act.

Failing the constitution of the tribunal by direct agreement between the parties, the following course shall be pursued:

Each party appoints two arbitrators, and these latter together choose an umpire.

In case of equal voting, the choice of the umpire is intrusted to a third Power, selected by the parties by common accord.

If no agreement is arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

Article 33.

When a sovereign or the chief of a State is chosen as arbitrator, the arbitral procedure is settled by him.

Article 34.

The umpire is by right president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

Article 35.

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place shall be filled in accordance with the method of his appointment.

Article 36.

The tribunal's place of session is selected by the parties. Failing this selection, the tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be changed by the tribunal without the assent of the parties.

Article 37.

The parties have the right to appoint delegates or special agents to attend the tribunal, for the purpose of serving as intermediaries between them and the tribunal.

They are further authorized to retain, for the defense of their rights and interests before the tribunal, counsel or advocates appointed by them for this purpose.

Article 38.

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

Article 39.

As a general rule the arbitral procedure comprises two distinct phases: preliminary examination and discussion.

Preliminary examination consists in the communication by the respective agents to the members of the tribunal and to the opposite party of all printed or written acts and of all documents containing the arguments invoked in the case. This communication shall be made in the form and within the periods fixed by the tribunal in accordance with Article 49.

Discussion consists in the oral development before the tribunal of the arguments of the parties.

Article 40.

Every document produced by one party must be communicated to the other party.

Article 41.

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in the *procès-verbaux* drawn up by the secretaries appointed by the president. These *procès-verbaux* alone have an authentic character.

Article 42.

When the preliminary examination is concluded, the tribunal has the right to refuse discussion of all fresh acts or documents which one party may desire to submit to it without the consent of the other party.

Article 43.

The tribunal is free to take into consideration fresh acts or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these acts or documents, but is obliged to make them known to the opposite party.

Article 44.

The tribunal can, besides, require from the agents of the parties the production of all acts, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

Article 45.

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may think expedient in defense of their case.

Article 46.

They have the right to raise objections and points. The decisions of the tribunal on those points are final, and cannot form the subject of any subsequent discussion.

Article 47.

The members of the tribunal have the right to put questions to the agents and counsel of the parties, and to demand explanations from them on doubtful points.

Neither the questions put nor the remarks made by members of the tribunal during the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

Article 48.

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

Article 49.

The tribunal has the right to issue rules of procedure for the conduct of the case, to decide the forms and periods within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

Article 50.

When the agents and counsel of the parties have submitted all explanations and evidence in support of their case, the president pronounces the discussion closed.

Article 51.

The deliberations of the tribunal take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the *procès-verbal*.

Article 52.

The award, given by a majority of votes, is accompanied by a statement of reasons. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

Article 53.

The award is read out at a public meeting of the tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

Article 54.

The award, duly pronounced and notified to the agents of the parties at variance, puts an end to the dispute definitively and without appeal.

Article 55.

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the award, and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the foregoing paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

Article 56.

The award is only binding on the parties who concluded the *compromis*.

When there is a question of interpreting a Convention to which Powers other than those concerned in the dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers has the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the award is equally binding on them.

Article 57.

Each party pays its own expenses and an equal share of those of the tribunal.

GENERAL PROVISIONS.

Article 58.

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers who were represented at the International Peace Conference at The Hague.

Article 59.

The non-signatory Powers who were represented at the International Peace Conference can adhere to the present Convention. For this purpose they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

Article 60.

The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a subsequent agreement among the contracting Powers.*

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*A protocol establishing, as regards the Powers unrepresented at the 1899 Conference, the mode of adhesion to this Convention, was signed at The Hague June 14, 1907, by representatives of all the Powers represented at the 1899 Conference. This protocol was as follows:

"The Powers which have ratified the Convention for the Pacific Settlement of International Disputes, signed at The Hague on July 29, 1899, desiring to enable the States that were not represented at the First Peace Conference, and were invited to the Second, to adhere to the aforesaid Convention; the undersigned delegates or diplomatic representatives of the above-mentioned powers, viz.: Germany, Austria-Hungary, Belgium, Bulgaria, China, Denmark, Spain, the United States of America, the United States of Mexico, France, Great Britain, Greece, Italy, Japan, Luxembourg, Montenegro, Norway, the Netherlands, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden, Switzerland, and Turkey, duly authorized to that effect, have agreed that there shall be opened by the Minister of Foreign Affairs of the Netherlands, a *procès-verbal* of adhesions, that shall serve to receive and record the said adhesions which shall immediately go into effect.

"In witness whereof the present protocol was drawn up, in a single copy, which shall remain in deposit in the archives of the Minister of Foreign Affairs of the Netherlands, and of which an authenticated copy shall be transmitted to each one of the signatory Powers.

"Done at the Hague, June 14, 1907.

"(Here follows signatures)."

The *procès-verbal* of adhesion referred to in the above protocol was as follows:

"There was signed in this city on June 14, 1907, a protocol establishing, in respect to the Powers unrepresented at the First Peace Conference which have been invited to the second, the mode of adhesion to the Convention for the Peaceful Settlement of International Disputes, signed at The Hague, July 29, 1899.

"Pursuant to the said protocol, the undersigned Minister of Foreign Affairs for Her Majesty the Queen of the Netherlands, on this day opened the present *procès-verbal* intended to receive and furthermore to record, as they may be presented, the adhesions of the aforesaid Convention.

"Done at The Hague, on June 15, 1907, in a single copy, which shall remain in deposit in the archives of the Ministry of Foreign Affairs, and of which a duly certified copy shall be transmitted to each of the signatory Powers.

"VAN TETS VAN GOUDRIAAN.

"*Successively adhered:* Argentine Republic, Brazil, Bolivia, Chile, Colombia, Cuba, Guatemala, Haiti, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Venezuela, Uruguay, Salvador, and Ecuador."

Article 61.

In the event of one of the high contracting parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and affixed their seals to it.

Done at The Hague, the 29th July, 1899, in a single copy, which shall remain in the archives of the Netherland Government, and copies of it, duly certified, be sent through the diplomatic channel to the contracting Powers.

[Here follow signatures.]

RATIFICATIONS, ADHESIONS, AND RESERVATIONS.*

The 1899 Convention was ratified by all the signatory Powers on the dates indicated:

Austria-Hungary	September 4, 1900
Belgium	September 4, 1900
Bulgaria	September 4, 1900
China	November 21, 1904
Denmark	September 4, 1900
France	September 4, 1900
Germany	September 4, 1900
Great Britain	September 4, 1900
Greece	April 4, 1901
Italy	September 4, 1900
Japan	October 6, 1900
Luxembourg	July 12, 1901
Mexico	April 17, 1901
Montenegro	October 16, 1900
Netherlands	September 4, 1900
Norway	(See Sweden and Norway.)
Persia	September 4, 1900
Portugal	September 4, 1900
Roumania	September 4, 1900
Russia	September 4, 1900
Servia	May 11, 1901
Siam	September 4, 1900
Spain	September 4, 1900
Sweden and Norway	September 4, 1900
Switzerland	December 29, 1900
Turkey	June 12, 1907
United States	September 4, 1900

* See "The Hague Conventions and Declarations of 1899 and 1907," edited by James Brown Scott, and published by the Carnegie Endowment for International Peace.

Adhesions:

Argentine Republic	June 15, 1907
Bolivia	June 15, 1907
Brazil	June 15, 1907
Chile	June 15, 1907
Colombia	June 15, 1907
Cuba	June 15, 1907
Dominican Republic	June 15, 1907
Ecuador	July 3, 1907
Guatemala	June 15, 1907
Haiti	June 15, 1907
Nicaragua	June 15, 1907
Panama	June 15, 1907
Paraguay	June 15, 1907
Peru	June 15, 1907
Salvador	June 20, 1907
Uruguay	June 17, 1907
Venezuela	June 15, 1907

*Reservations:**

Roumania

Under the reservations formulated with respect to Articles 16, 17, and 19 of the present Convention (15, 16, and 18 of the project presented by the committee on examination), and recorded in the *procès-verbal* of the sitting of the Third Commission of July 20, 1899.†

Extract from the *procès-verbal:*

The Royal Government of Roumania being completely in favor of the principle of *facultative* arbitration, of which it appreciates the great importance in international relations, nevertheless does not intend to undertake, by Article 15, an engagement to accept arbitration in every case there provided for, and it believes it ought to form express reservations in that respect.

It cannot therefore vote for this article, except under that reservation.

The Royal Government of Roumania declares that it cannot adhere to Article 16 except with the express reservation, entered in the procès-verbal, that it has decided not to accept, in any case, an international arbitration for disagreements or disputes previous to the conclusion of the present Convention.

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* All these reservations were made at signature.
† Reservations maintained at ratification.

The Royal Government of Roumania declares that in adhering to Article 18 of the Convention, it makes no engagement in regard to obligatory arbitration.*

Servia

Under the reservations recorded in the *procès-verbal* of the Third Commission of July 20, 1899.†
Extract from the *procès-verbal:*

In the name of the Royal Government of Servia, we have the honor to declare that our adoption of the principle of good offices and mediation does not imply a recognition of the right of third States to use these means except with the extreme reserve which proceedings of this delicate nature require.

We do not admit good offices and mediation except on condition that their character of purely friendly counsel is maintained fully and completely, and we never could accept them in forms and circumstances such as to impress upon them the character of intervention.‡

Turkey

Under reservation of the declaration made in the plenary sitting of the Conference of July 25, 1899.
Extract from the *procès-verbal:*

The Turkish delegation, considering that the work of this Conference has been a work of high loyalty and humanity, destined solely to assure general peace by safeguarding the interests and the rights of each one, declares, in the name of its Government, that it adheres to the project just adopted, on the following conditions:

1. It is formally understood that recourse to good offices and mediation, to commissions of inquiry and arbitration, is purely facultative, and could not in any case assume an obligatory character or degenerate into interventions;

2. The Imperial Government itself will be the judge of the cases where its interests would permit it to admit these methods without its abstention or refusal to have recourse to them being considered by the signatory States as an unfriendly act.

It goes without saying that in no case could the means in question be applied to questions concerning interior regulation.*

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* Declaration of Turkhan Pasha. *Procès-verbaux*, pt. 1, p. 70. This reservation does not appear in the instrument of ratification.

† Reservations maintained at ratification.

‡ Declaration of Mr. Miyatovitch. *Procès-verbaux*, pt. iv, p. 47.

United States

Under reservation of the declaration made at the plenary sitting of the Conference on the 25th of July, 1899.†

Extract from the *procès-verbal:*

> The delegation of the United States of America on signing the Convention for the pacific settlement of international disputes, as proposed by the International Peace Conference, makes the following declaration:
>
> Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.‡

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† Reservation maintained at ratification.

‡ *Procès-verbaux*, pt. 1, p. 69. ~~Compare the reservation of the United States to the 1907 Convention, post, p. 87.~~

APPENDIX B.

THE DRAFT CONVENTION RELATIVE TO THE CREATION OF A JUDICIAL ARBITRATION COURT, OTHERWISE KNOWN AS THE PERMANENT COURT OF ARBITRAL JUSTICE.

(Extract from the Final Act of the Second Hague Conference, signed October 18, 1907).

The Conference recommends to the signatory Powers the adoption of the annexed draft Convention for the creation of a Judicial Arbitration Court, and the bringing it into force as soon as an agreement has been reached respecting the selection of the judges and the constitution of the Court.

DRAFT CONVENTION RELATIVE TO THE CREATION OF A JUDICIAL ARBITRATION COURT.

PART I.—CONSTITUTION OF THE JUDICIAL ARBITRATION COURT.

Article 1.

With a view to promoting the cause of arbitration, the contracting Powers agree to constitute, without altering the status of the Permanent Court of Arbitration, a Judicial Arbitration Court, of free and easy access, composed of judges representing the various juridical systems of the world, and capable of insuring continuity in jurisprudence of arbitration.

Article 2.

The Judicial Arbitration Court is composed of judges and deputy judges chosen from persons of the highest moral reputation, and all fulfilling conditions qualifying them, in their respective countries, to occupy high legal posts, or be jurists of recognized competence in matters of international law.

The judges and deputy judges of the Court are appointed, as far as possible, from the members of the Permanent Court of Arbitration. The appointment shall be made within the six months following the ratification of the present Convention.

Article 3.

The judges and deputy judges are appointed for a period of twelve years, counting from the date on which the appointment is notified to the Administrative Council created by the Convention for the Pacific Settlement of International Disputes. Their appointments can be renewed.

Should a judge or deputy judge die or retire, the vacancy is filled in the manner in which his appointment was made. In this case, the appointment is made for a fresh period of twelve years.

Article 4.

The judges of the Judicial Arbitration Court are equal and rank according to the date on which their appointment was notified. The judge who is senior in point of age takes precedence when the date of notification is the same.

The deputy judges are assimilated, in the exercise of their functions, with the judges. They rank, however, below the latter.

Article 5.

The judges enjoy diplomatic privileges and immunities in the exercise of their functions outside their own country.

Before taking their seat, the judges and deputy judges must, before the Administrative Council, swear or make a solemn affirmation to exercise their functions impartially and conscientiously.

Article 6.

The Court annually nominates three judges to form a special delegation and three more to replace them should the necessity arise. They may be reelected. They are balloted for. The persons who secure the largest number of votes are considered elected. The delegation itself elects its president, who, in default of a majority, is appointed by lot.

A member of the delegation cannot exercise his duties when the Power which appointed him, or of which he is a national, is one of the parties.

The members of the delegation are to conclude all matters submitted to them, even if the period for which they have been appointed judges has expired.

Article 7.

A judge may not exercise his judicial functions in any case in which he has, in any way whatever, taken part in the decision of a national tribunal, of a tribunal of arbitration, or of a commission of inquiry, or has figured in the suit as counsel or advocate for one of the parties.

A judge cannot act as agent or advocate before the Judicial Arbitration Court or the Permanent Court of Arbitration, before a special tribunal of arbitration or a commission of inquiry, nor act for one of the parties in any capacity whatsoever so long as his appointment lasts.

Article 8.

The Court elects its president and vice-president by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority and, in case the votes are even, by lot.

Article 9.

The judges of the Judicial Arbitration Court receive an annual salary of 6,000 Netherland florins. This salary is paid at the end of each half-year, reckoned from the date on which the Court meets for the first time.

In the exercise of their duties during the sessions or in the special cases covered by the present Convention, they receive the sum of 100 florins *per diem*. They are further entitled to receive a traveling allowance fixed in accordance with regulations existing in their own country. The provisions of the present paragraph are applicable also to a deputy judge when acting for a judge.

These emoluments are included in the general expenses of the Court dealt with in Article 31, and are paid through the International Bureau created by the Convention for the Pacific Settlement of International Disputes.

Article 10.

The judges may not accept from their own Government or from that of any other Power any remuneration for services connected with their duties in their capacity of members of the Court.

Article 11.

The seat of the Judicial Court of Arbitration is at The Hague, and cannot be transferred, unless absolutely obliged by circumstances, elsewhere.

The delegation may choose, with the assent of the parties concerned, another site for its meetings, if special circumstances render such a step necessary.

Article 12.

The Administrative Council fulfills with regard to the Judicial Court of Arbitration the same functions as to the Permanent Court of Arbitration.

Article 13.

The International Bureau acts as registry to the Judicial Court of Arbitration, and must place its offices and staff at the disposal of the Court. It has charge of the archives and carries out the administrative work.

The secretary general of the Bureau discharges the functions of registrar.

The necessary secretaries to assist the registrar, translators and shorthand writers are appointed and sworn in by the Court.

Article 14.

The Court meets in session once a year. The session opens the third Wednesday in June, and lasts until all the business on the agenda has been transacted.

The Court does not meet in session if the delegation considers that such meeting is unnecessary. However, when a Power is party in a case actually pending before the Court, the pleadings in which are closed, or about to be closed, it may insist that the session should be held.

When necessary, the delegation may summon the Court in extraordinary session.

Article 15.

A report of the doings of the Court shall be drawn up every year by the delegation. This report shall be forwarded to the contracting Powers through the International Bureau. It shall also be communicated to the judges and deputy judges of the Court.

Article 16.

The judges and deputy judges, members of the Judicial Arbitration Court, can also exercise the functions of judge and deputy judge in the International Prize Court.

PART II.—COMPETENCY AND PROCEDURE.

Article 17.

The Judicial Court of Arbitration is competent to deal with all cases submitted to it, in virtue either of a general undertaking to have recourse to arbitration or of a special agreement.

Article 18.

The delegation is competent—

1. To decide the arbitrations referred to in the preceding article, if the parties concerned are agreed that the summary procedure, laid down in Part IV, Chapter IV, of the Convention for the Pacific Settlement of International Disputes is to be applied;*

2. To hold an inquiry under and in accordance with Part III of the said Convention, in so far as the delegation is intrusted with such inquiry by the parties acting in common agreement. With the assent of the parties concerned, and as an exception to Article 7, paragraph 1, the members of the delegation who have taken part in the inquiry may sit as judges, if the case in dispute is submitted to the arbitration of the Court or of the delegation itself.

Article 19.

The delegation is also competent to settle the *compromis* referred to in Article 52 of the Convention for the Pacific

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* This refers to the Convention for the Pacific Settlement of International Disputes as amended by the Hague Conference of 1907. The Convention in the form in which it was adopted by the Hague Conference of 1899 is given in this Appendix, inasmuch as the Convention as amended by the Hague Conference of 1907, has not yet been ratified by a majority of nations. By article 91 of the Convention as amended in 1907, it is provided: "The present Convention, duly ratified, shall replace, as between the contracting Powers, the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899." It seems that the 1907 Convention has not been "duly ratified," and is therefore not in force.

Settlement of International Disputes if the parties are agreed to leave it to the Court.*

It is equally competent to do so, even when the request is only made by one of the parties concerned, if all attempts have failed to reach an understanding through the diplomatic channel, in the case of—

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present Convention has come into force, providing for a *compromis* in all disputes, and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the delegation. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of questions to be submitted to compulsory arbitration, unless the treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the *compromis* should be settled in some other way.

Article 20.

Each of the parties concerned may nominate a judge of the Court to take part, with power to vote, in the examination of the case submitted to the delegation.

If the delegation acts as a commission of inquiry, this task may be intrusted to persons other than the judges of the Court. The traveling expenses and remuneration to be given to the said persons are fixed and borne by the Powers appointing them.

Article 21.

The contracting Powers only may have access to the Judicial Arbitration Court set up by the present Convention.

Article 22.

The Judicial Court of Arbitration follows the rules of procedure laid down in the Convention for the Pacific Settlement of International Disputes, except in so far as the procedure is laid down in the present Convention.

Article 23.

The Court determines what language it will itself use and what languages may be used before it.

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* This also refers to the Convention for the Pacific Settlement of International Disputes as amended by the Conference of 1907.

Article 24.

The International Bureau serves as channel for all communications to be made to the judges during the interchange of pleadings provided for in Article 63, paragraph 2, of the Convention for the Pacific Settlement of International Disputes.*

Article 25.

For all notices to be served, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the State on whose territory the service is to be carried out. The same rule applies in the case of steps being taken to procure evidence.

The requests addressed for this purpose can only be rejected when the Power applied to considers them likely to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power on whose territory it sits.

Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

Article 26.

The discussions are under the control of the president or vice-president, or, in case they are absent or cannot act, of the senior judge present.

The judge appointed by one of the parties cannot preside.

Article 27.

The Court considers its decisions in private, and the proceedings are secret.

All decisions are arrived at by a majority of the judges present. If the number of judges is even and equally divided, the vote of the junior judge, in the order of precedence laid down in Article 4, paragraph 1, is not counted.

Article 28.

The judgment of the Court must give the reasons on which it is based. It contains the names of the judges taking part in it; it is signed by the president and registrar.

Article 29.

Each party pays its own costs and an equal share of the costs of the trial.

Article 30.

The provisions of Articles 21 to 29 are applicable by analogy to the procedure before the delegation.

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* This refers to the 1907 Convention.

When the right of attaching a member to the delegation has been exercised by one of the parties only, the vote of the member attached is not recorded if the votes are evenly divided.

Article 31.

The general expenses of the Court are borne by the contracting Powers.

The Administrative Council applies to the Powers to obtain the funds requisite for the working of the Court.

Article 32.

The Court itself draws up its own rules of procedure, which must be communicated to the contracting Powers.

After the ratification of the present Convention the Court shall meet as early as possible in order to elaborate these rules, elect the president and vice-president, and appoint the members of the delegation.

Article 33.

The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated through the Netherlands Government to the contracting Powers, which will consider together as to the measures to be taken.

Article 34.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* of the deposit of each ratification shall be drawn up, of which a duly certified copy shall be sent through the diplomatic channel to all the signatory Powers.

Article 35.

The Convention shall come into force six months after its ratification.

It shall remain in force for twelve years, and shall be tacitly renewed for periods of twelve years, unless denounced.

The denunciation must be notified, at least two years before the expiration of each period, to the Netherland Government, which will inform the other Powers.

The denunciation shall only have effect in regard to the notifying Power. The Convention shall continue in force as far as the other Powers are concerned.

SIGNATURES AND RESERVATIONS.

The Final Act of the Second Hague Conference was signed by plenipotentiaries of the following nations: Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Luxembourg, Mexico, Montenegro, Netherlands, Nicaragua, Norway, Panama, Persia, Peru, Portugal, Roumania, Russia, Salvador, Servia, Siam, Spain, Sweden, Switzerland, Turkey, United States, Uruguay, and Venezuela.

Switzerland, however, signed the Final Act under reservation of the declaration concerning the Judicial Arbitration Court (Court of Arbitral Justice), "which the Swiss Federal Council does not accept."

APPENDIX C.

A DECLARATION OF THE FUNDAMENTAL PRINCIPLES OF HUMAN SOCIETY.

(Extract from the Preamble of the Declaration of Independence of the United States of America, dated July 4, 1776.)

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

APPENDIX D.

A DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS, ADOPTED BY THE AMERICAN INSTITUTE OF INTERNATIONAL LAW, JANUARY 6, 1916, AND SUBSEQUENTLY ADOPTED AND PROMOTED BY THE AMERICAN PEACE SOCIETY.

Whereas the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, the right to the pursuit of happiness, as added by the Declaration of Independence of the United States of America, the right to legal equality, the right to property, and the right to the enjoyment of the aforesaid rights; and

Whereas these fundamental rights, thus universally recognized, create a duty on the part of the peoples of all nations to observe them; and

Whereas, according to the political philosophy of the Declaration of Independence of the United States and the universal practice of the American Republics, nations or governments are regarded as created by the people, deriving their just powers from the consent of the governed, and are instituted among men to promote their safety and happiness and to secure to the people the enjoyment of their fundamental rights; and

Whereas the nation is a moral or juristic person, the creature of law and subordinated to law, as is the natural person in political society; and

Whereas we deem that these fundamental rights can be stated in terms of international law and applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the States forming the society of nations; and

Whereas these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right to property, and the right to the observance thereof, are, when stated in terms of international law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations; the right of equality in law and before law; the right to territory within defined boundaries and to exclusive jurisdiction therein, and the right to the observance of these fundamental rights; and

Whereas the rights and the duties of nations are, by virtue of membership in the society thereof, to be exercised and performed in accordance with the exigencies of their mutual interdependence expressed in the preamble to the Convention for the Pacific Settlement of International Disputes of

the First and Second Hague Peace Conferences, recognizing the solidarity which unites the members of the society of civilized nations; therefore the American Institute of International Law, at its first session, held in the city of Washington, in the United States of America, on the sixth day of January, 1916, adopted the following six articles, together with the commentary thereon, to be known as its Declaration of the Rights and Duties of Nations:

I. Every nation has the right to exist and to protect and to conserve its existence, but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States.

II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory and all persons, whether native or foreign, found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international; national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

APPENDIX E.

A DECLARATION OF THE OBJECTS FOR WHICH THE CONSTITUTION OF THE UNITED STATES WAS FORMED.

(Preamble of the Constitution of the United States.)

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare. and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

APPENDIX F.

A UNIVERSAL BILL OF RIGHTS MADE BY SELECTING THE UNIVERSALLY APPLICABLE PROVISIONS OF THE BILL OF RIGHTS CONTAINED IN THE CONSTITUTION OF THE UNITED STATES.

(This universal bill of rights was first formulated in the Instructions of the United States Government to the Philippine Commission, dated April 7, 1900. It was approved by the Supreme Court of the United States as correctly stating the bill of rights by which the United States, from the moment when the Philippines were annexed, was bound in its dealings with the people and governments of these islands. See Kepner *vs.* United States, 195 U. S., 100, 122, 123.)

There are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom. . . . There are also certain practical rules of government which we have found essential to the preservation of these great principles of liberty and law. . . . These principles and these rules of government must be established and maintained in [the] islands for the sake of the liberty and happiness [of the people of the islands], however much they may conflict with the customs or laws or procedure with which they are familiar. . . . Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules:

That no person shall be deprived of life, liberty, or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; that no person shall be put twice in jeopardy for the same offense, or be compelled in any criminal case to be a witness against himself; that the right to be secure against unreasonable searches or seizures shall not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of attainder or *ex post facto* law shall be passed; that no law shall be passed abridging the freedom of speech or of the press or the rights of the people to peaceably assemble and petition the government for a redress of grievances; that no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed.